

Complaint

IN THE MATTER OF

FYR-FYTER COMPANY ET AL.

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2352. Complaint, Apr. 4, 1935—Order, Sept. 12, 1935*

Consent order requiring respondent corporations, their officers, etc., in connection with the sale and offer of fire extinguishing equipment and supplies in interstate commerce, and subject to the exception from such order of any lawful action taken in regard to patented articles or under license agreements relating thereto, to cease and desist from doing and performing, by understanding, agreement, or combination among themselves or between or among any two or more of them, or with others, acting directly by or through the respondents, the following acts and things, namely—

- (a) Fixing prices at which said commodities are to be sold;
- (b) Agreeing that none of them singly will solicit the customers of another respondent or quote them prices lower than those at the time being quoted such customers by the respondent supplying them;
- (c) Refusing to continue to sell fire extinguishing equipment and supplies to distributors, jobbers, and dealers who will not agree with them not to sell such fire extinguishing equipment and supplies at prices less than those fixed by said respondents;
- (d) Refusing to sell such equipment and supplies to all distributors, jobbers, and dealers who sell same, purchased from respondents, at prices lower than the prices so fixed by them;
- (e) Agreeing upon prices to be bid where competitive bids are called for by industrial and governmental users of respondents' fire extinguishing equipment and supplies; or
- (f) Procuring withdrawal and cancellation of bids called for by industrial and governmental users of respondents' fire extinguishing equipment and supplies in cases where such bids so withdrawn are at prices for such fire extinguishing equipment and supplies less than those fixed by respondents; and

Dismissing complaint against the individual respondents for the reason that the order against the corporate respondents, their officers, employees and agents adequately and effectively restores free and open competition between and among all of the respondents engaged in selling fire extinguisher equipment and supplies in interstate commerce.

Mr. P. C. Kolinski for the Commission.

Chadbourne, Hunt, Jaechel & Brown, of New York City, for respondents, along with whom *Darby & Darby*, of New York City, also appeared for *Walter Kidde & Co., Inc.*

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Pursuant to the provisions of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission,

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having reason to believe that each and all the parties named in the caption¹ hereof, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Fyr-Fyter Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at Dayton, Ohio.

Respondent Buffalo Fire Appliance Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at Buffalo, N. Y.

Respondent Miller-Peerless Manufacturing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at Chicago, Ill.

Respondent Badger Fire Extinguisher Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business at Boston, Mass.

Respondent Knight & Thomas, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maine, with its principal office and place of business at Boston, Mass.

Respondent American LaFrance & Foamite Industries Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at Elmira, N. Y.

Respondent Pyrene Manufacturing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Newark, N. J.

Respondent Walter Kidde & Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at New York City.

Respondent Fyrou Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at New York, N. Y.

¹ Respondents referred to and named in the caption of the complaint proper but omitted as published for the sake of brevity are set forth in Paragraph 1.

Respondent Fyr-Freeze, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at New York, N. Y.

Respondent C-O-Two Fire Equipment Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Newark, N. J.

Respondent Wil-X-Mfg. Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at Brooklyn, N. Y.

Respondent W. D. Allen Manufacturing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at Chicago, Ill.

Respondent Phister Manufacturing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at Cincinnati, Ohio.

Respondent Harker Manufacturing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at Cincinnati, Ohio.

Respondent The General Fire Truck Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business at St. Louis, Mo.

Respondent Elkhart Brass Mfg. Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business at Elkhart, Ind.

Respondent George W. Diener Manufacturing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at Chicago, Ill.

Respondents G. R. Stephens, A. O. Boniface, and W. J. Parker are respectively chairman, secretary, impartial agency, and members of the Code Authority for the Fire Extinguishing Appliance Manufacturing Industry. Respondents B. F. Allnutt, A. H. Blackett, Dana Estes, R. C. Iddings, E. E. O'Neill, and E. G. Weed are members of the Code Authority for the Fire Extinguishing Appliance Manufacturing Industry, with its principal office located in New York, N. Y.

PAR. 2. The corporation respondents named in paragraph 1 hereto are now and since their organization have been engaged in the manufacture at their respective manufacturing plants of fire extinguishing equipment and supplies, and in the sale thereof throughout the various States of the United States, the territories thereof and the District of Columbia. In the course and conduct of their businesses said corporation respondents named in paragraph 1 hereof, for more than three years last past, have caused, and still cause such fire extinguishing equipment and supplies when sold by them, to be transported in interstate commerce from their respective places of business to, into, and through various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers in such other States to whom such fire extinguishing equipment and supplies are and have been sold.

In the course and conduct of their aforesaid respective businesses, corporation respondents named, but for the matters and things hereinafter set out, would be naturally and normally in competition with each other in price, and otherwise are in such competition with other individuals, partnerships, and corporations engaged in the manufacture and sale, or purchase, sale, and distribution of fire extinguishing equipment and supplies in interstate commerce.

The corporation respondents named, constitute a large and important part of the manufacturers, distributors, and dealers in fire extinguishing equipment and supplies manufactured and sold in the United States. The amount of fire extinguishing equipment and supplies manufactured and sold by said corporation respondents, constitutes, and at all times since February 1932 has constituted, approximately 85 per cent of all fire extinguishing equipment and supplies manufactured and sold in the United States.

PAR. 3. In February 1932, or thereabouts, the respondents named in paragraph 1 hereof, for the purpose of eliminating price competition among themselves entered into, have since carried out, and are still carrying out an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they have fixed and maintained uniform prices to be exacted by them from their purchasers of fire extinguishing equipment and supplies and thus to fix the price of fire extinguishing equipment and supplies entering into interstate commerce. Pursuant to and for the purpose of carrying out the aforesaid agreement, combination, understanding and conspiracy, the respondents have, among other things, done the following:

(a) By agreement among themselves have fixed and maintained, and still fix and maintain uniform prices for fire extinguishing equipment and supplies sold by them and by each of them.

(b) Agreed that none of said respondents singly would solicit the customers of another respondent nor quote them prices lower than those at the time being quoted such customers by the respondent supplying them.

(c) Refused to continue to sell fire extinguishing equipment and supplies to distributors, jobbers, and dealers who would not agree with them not to sell such fire extinguishing equipment and supplies at prices less than those fixed by said respondents.

(d) Refused to sell fire extinguishing equipment and supplies to all distributors, jobbers, and dealers who sold such fire extinguishing equipment and supplies purchased from said respondents at prices for such fire extinguishing equipment and supplies less than those so fixed by the said respondents.

(e) Agreed upon prices to be bid where competitive bids were called for by industrial and governmental users of respondents' fire extinguishing equipment and supplies.

(f) Procured withdrawal and cancellation of bids called for by industrial and governmental users of respondents' fire extinguishing equipment and supplies in cases where such bids so withdrawn were at prices for such fire extinguishing equipment and supplies less than those fixed by respondents.

(g) Used other and similar methods and means designed to suppress and prevent price competition among those engaged in the fire extinguishing equipment and supply business in the United States.

PAR. 4. On and shortly prior to December 5, 1933, respondents, under color of authority of the Code of Fair Competition for the Fire Extinguishing Appliance Manufacturing Industry, approved November 4, 1933, by the President pursuant to the provisions of Title I of an Act of Congress approved June 16, 1933, entitled "An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes", agreed among themselves in an assumed and pretended compliance with said Code, to fix and maintain uniform prices for fire extinguishing equipment sold by them, and have since that date continued to sell, at fixed uniform prices such fire extinguishing equipment; that by virtue of such agreement under the guise and pretense of compliance with aforesaid Code,

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competition in price in the sale of fire extinguishing equipment has been suppressed, eliminated and destroyed; that said Code of Fair Competition for the Fire Extinguishing Appliance Manufacturing Industry as approved by the President on November 4, 1933, does not authorize price fixing, and was not designed to authorize or permit price fixing by mutual agreement, understanding, or any method whatsoever; and said Code of Fair Competition specifically prohibits monopolies or monopolistic practices, and the elimination, or oppression of, and discrimination against small enterprises.

PAR. 5. The combination and conspiracy so entered into and carried on by said respondents and the acts and things done thereunder and pursuant thereto, as hereinabove alleged, resulted and results in the suppression and prevention of competition between and among them and in the enhancement of prices to the using public; in depriving the purchasing and consuming public of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry; in oppression and discrimination against small business enterprises which were or are engaged in manufacturing, selling and distributing fire extinguishing equipment and supplies; and are monopolistic practices and methods of competition which are unfair, and they constitute unfair methods of competition in commerce within the intent and meaning, and in violation of Section 5 of said Act approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes".

ORDER TO CEASE AND DESIST

The Commission, having the above matter under consideration and the respondents having filed consent answers under the Rules of Practice of the Commission, wherein said respondents, although insisting that all things done by them were warranted by the code for this industry formulated and approved under the National Industrial Recovery Act, and therefore done in good faith, nevertheless waive hearing on the charges set forth in the complaint and consent that the Commission may make, enter, issue and serve upon them, without hearing, without evidence, and without findings as to the facts, an order to cease and desist from the methods of competition alleged in the complaint.

And the Commission having duly considered the complaint and such answers, and being fully advised in the premises—

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It is now ordered, That said corporate respondents, Fyr-Fyter Company, Buffalo Fire Appliance Corporation, Miller-Peerless Manufacturing Company, Badger Fire Extinguisher Company, Knight & Thomas, Inc., American LaFrance & Foamite Industries Corporation, Pyrene Manufacturing Company, Walter Kidde & Company, Inc., Fyrout Corporation, Fyr-Freeze, Inc., C-O-Two Fire Equipment Company, Wil-X-Mfg. Corporation, W. D. Allen Manufacturing Company, Phister Manufacturing Company, Harker Manufacturing Company, The General Fire Truck Corporation, Elkhart Brass Mfg. Company, George W. Diener Manufacturing Company, their officers, agents, representatives and employees, forthwith cease and desist, in connection with the business of selling and offering for sale fire extinguishing equipment and supplies, in interstate commerce, from doing and performing, by understanding, agreement, or combination among themselves or between or among any two or more of them, or with others, acting directly or by or through the respondent, the following acts and things:

(1) Fixing prices, at which said commodities would be sold.

(2) Agreeing that none of said respondents singly will solicit the customers of another respondent nor quote them prices lower than those at the time being quoted such customers by the respondent supplying them.

(3) Refusing to continue to sell fire extinguishing equipment and supplies to distributors, jobbers, and dealers who will not agree with them not to sell such fire extinguishing equipment and supplies at prices less than those fixed by said respondents.

(4) Refusing to sell fire extinguishing equipment and supplies to all distributors, jobbers, and dealers who sell such fire extinguishing equipment and supplies purchased from said respondents at prices for such fire extinguishing equipment and supplies less than those so fixed by the said respondents.

(5) Agreeing upon prices to be bid where competitive bids are called for by industrial and governmental users of respondents' fire extinguishing equipment and supplies.

(6) Procuring withdrawal and cancellation of bids called for by industrial and governmental users of respondents' fire extinguishing equipment and supplies in cases where such bids so withdrawn are at prices for such fire extinguishing equipment and supplies less than those fixed by respondents.

And provided that the prohibition of this order shall not apply to any lawful action taken in regard to patented articles or under license agreements relating thereto.

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It is further ordered, That the complaint herein be and the same hereby is dismissed against the individual respondents for the reason that the order against the corporate respondents, their officers, employees, and agents adequately and effectively restores free and open competition between and among all of the respondents engaged in selling fire extinguisher equipment and supplies in interstate commerce.

It is further ordered, That within 60 days from the date of the service of this order upon said respondents, they shall file with the Commission a report in writing setting forth in detail the manner and form in which this order has been complied with.

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IN THE MATTER OF

WHITE CROSS LABORATORIES, INC.

COMPLAINT AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5
OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2492. Complaint, July 6, 1935—Order, Sept. 17, 1935

Consent order requiring respondent corporation, its officers, etc., in connection with the manufacture, sale and distribution of so-called "Turtle Oil Cream" in interstate commerce, the District of Columbia, or any territory of the United States, to cease and desist from—

- (a) Using words "turtle oil" either independently or in connection or conjunction with any word or words as part of the trade or brand name for its product unless and until the oil, fatty substance and any derivative thereof used in the production of the said turtle oil cream is, in fact, wholly derived from turtles; or
- (b) Using said words either independently or in connection or conjunction with any word, words, or phrases, in advertisements, advertising literature, radio broadcasts, or by any of these agencies in any manner whatsoever to describe turtle oil cream unless and until the oil, fatty substance and any derivative thereof used in the production of the said turtle oil cream is, in fact, wholly derived from turtles.

Mr. S. Brogdyne Teu, II for the Commission.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission having reason to believe that White Cross Laboratories, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. White Cross Laboratories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois with its principal place of business in the city of Chicago, in the State of Illinois. It is now and for more than one year last past has been engaged in the manufacture, sale and distribution in interstate commerce of a cosmetic designated as La Paz Turtle Oil Cream. Said respondent has caused and still causes said product when sold to be shipped from its place of business in the State of Illinois to purchasers thereof located in a State or States of the United States other than the State of Illinois. In the course and conduct of its business White Cross Laboratories, Inc., was and is at all